

# **EXHIBIT B**

Home Depot Builds a Data Breach Settlement Blueprint, Corporate Law & Accountability Report (BNA)

## Corporate Law & Accountability Report®

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### Data Breaches

## Home Depot Builds a Data Breach Settlement Blueprint

### BNA Snapshot

- The Home Depot Inc. settles claims with shareholders relating to 2014 payment card data breach
- Proposed settlement terms may be data breach response blueprint to help other companies



By Daniel R. Stoller

The Home Depot Inc.'s proposed settlement of shareholder derivative claims stemming from a massive payment card breach may be a good corporate security governance improvement blueprint for other companies ( *In re The Home Depot Inc. S'holder Derivative Litig.* , N.D. Ga., No. 15-cv-02999, proposed settlement filed 4/28/17).

Home Depot would change its corporate governance cybersecurity policies and pay attorneys over \$1 million to settle a shareholder suit relating to a 2014 data breach, under the terms of the plaintiffs' no-fault unopposed proposed settlement filed April 28 in the U.S. District Court for the Northern District of Georgia.

Companies hit by data breaches often face class action complaints filed by consumers. They also face lawsuits from shareholders looking to thwart future breaches and restore financial stability to companies in which they have invested. Home Depot's willingness to take meaningful but financially limited remedial mitigating action achieves a mutually beneficial resolution that companies facing any kind of data breach lawsuits, such as Yahoo! Inc., may rely on to improve their corporate data governance.

The shareholder derivative cases against companies hit by a data breach show that a board can be held liable in certain circumstances for its action or lack of action. A derivative suit is one brought by a shareholder on behalf of the company, usually against directors or the board. These cases often are dismissed without a settlement. For example, Wydhman Worldwide Corp. and Target Corp. both beat shareholder derivative suits over claims that they breached their fiduciary duties in relation to payment card breaches. The Wendy's Co. is in a shareholder derivative suit stemming from a January 2016 breach.

Melissa Krasnow, privacy partner at VLP Law Group LLP in Minneapolis, told Bloomberg BNA May 1 that the settlement may be a "roadmap" for other companies, especially consumer facing retailers, that have been hit by a data breach. Companies and their counsel may look to the settlement for "additional guidance" on how to conduct post-breach remedial actions, she said.

Representatives for Home Depot didn't immediately respond to Bloomberg BNA's email request for comment.

### Second Life for Shareholders

Shareholders had to appeal their claims before reaching the settlement. The case was dismissed in the U.S. District Court for the Northern District of Georgia Nov. 30, 2016, because the plaintiffs failed to overcome "the incredibly high hurdle" that "a majority of the board faced substantial liability because it consciously failed to act in the face of a known duty to act," the court wrote.

There is a very high bar for shareholders to overcome in derivative suits, Krasnow said. "It is not that the board has to be perfect but they need to go through a process," she said.